



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

**TE/GE: EO Examinations**

**625 Fulton Street, Room 503**

**Brooklyn, NY 11201**

501.03-00

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

March 1, 2011

Release Number: **201121022**

Release Date: 5/27/2011

**LEGEND**

ORG = Organization name

XX = Date Address = address

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

**CERTIFIED MAIL**

ORG  
ADDRESS

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated February 27, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective July 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

As a result of our examination for the tax year ended June 30, 20XX, it was determined that your organization has been inactive since inception and that there have been no operations or regular financial activities conducted or planned. As such, you failed to meet the operational requirements for continued exemption under IRC 501(c)(3).

Contributions to your organization are no longer deductible under IRC §170 after July 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending June 30, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Pursuant to section 509(b) of the Code, your private foundation status continues unless your status as such is terminated under section 507 of the Code. Therefore, in addition to filing Form 1120, you are required to continue filing Form 990-PF, and you are still

subject to excise taxes under Chapter 42 of the Code until such time as you terminate your private foundation status under section 507 of the Code.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosure:  
Publication 892



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**DEPARTMENT OF THE TREASURY**

Internal Revenue Service  
300 N. Los Angeles Street, MS 7300  
Los Angeles, CA 90012

December 7, 2010

ORG  
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892 & 3498  
Form 6018  
Report of Examination

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer	TIN	Year/Period Ended
ORG (EIN: EIN)		June 30, 20XX

**LEGEND**

ORG = Organization name      XX = Date      Address = address      City = city  
State = state      Director = director      Secretary = secretary      RA-1, RA-2  
& RA-3 = 1<sup>ST</sup> 2<sup>ND</sup> & 3<sup>RD</sup> RA      CO-1, CO-2, CO-3, CO-4 & CO-5 = 1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup>, 4<sup>TH</sup>, &  
5<sup>TH</sup> COMPANIES

**ISSUE:**

Does ORG qualify for exemption under Section 501(c)(3) of the Internal Revenue Code?

**FACTS:**

ORG was formed as a private foundation under Internal Revenue Code Section 509(a). The foundation was formed back in 20XX. Director, Executive Director formed the foundation. Currently Director is the only officer of the foundation. Per review of the original exemption application secured through IRS microfiche files, the foundation was formed for the following purposes:

1. Research and Development to create low-cost, energy efficient, eco-friendly shelters for migrant workers, the homeless, financially needy individuals and families, poverty stricken communities or emergency relief programs. We expect that % of the finances will be devoted to the research and development, which, when allowable, may provide for a wage for Director's efforts in the future. % of Director's time shall be devoted to the research and development.
2. Build the shelters which result from the research and development explained above. These shelters shall be for migrant workers, the homeless, financially needy individuals and families, poverty stricken communities or emergency relief programs. We expect that % of the finances will be used toward the production of the shelters. This will depend, of course, upon whether materials will be donated by various organizations, which we will solicit as well. These completed shelters shall then be donated to selected individuals or groups, which criteria is set forth on Schedule 12(b) attached hereto and made a part hereof.

The remaining % shall be spent on targeting the recipients of the shelters and fundraising efforts to increase the donations of money and materials for additional research and development and building. We will contact various state and federal governmental agencies which assist low income individuals, including CO-1; CO-2; CO-3; CO-4 organizations and

In addition Articles of Incorporation were secured through IRS microfiche files, which state:

I

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“The name of this corporation is ORG.

## II

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.

## III

This corporation is organized exclusively for charitable purposes within the meaning of Internal Revenue Code Section 501(c)(3) or the corresponding provision of any future United States internal revenue law.

In furtherance thereof, the Corporation may receive property by gift, devise or bequest, invest or reinvest the same, and apply the income and principal thereof, as the Board of Directors may from time to time determine, either directly or through contributions to any charitable organization or organizations, exclusively for charitable purposes, and engage in any lawful act or activity for which corporations may be organized under the State Nonprofit Public Benefit Corporation Law.

Notwithstanding any other provision of these articles, this organization shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue Law.

## IV

The name and address in the State of State of this corporation’s initial agent for service of process is:

Director  
Address, City, State

## V

No substantial part of the activities of this corporation shall consist of lobbying or propaganda, or otherwise attempting to influence legislation, except as provided in Internal Revenue Code section 501(h); this corporation shall not participate or

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intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

## VI

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net earnings of this corporation shall inure to the benefit of any of its directors, trustees, officers, private shareholders or members thereof or to individuals. Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provisions for payment, of all debts and liabilities of this corporation shall be distributed to nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code.

DATED: August 6, 20XX.

The Articles of Incorporation were signed Secretary, Incorporator.

The foundation received their initial determination letter dated February 27, 20XX granting the organization exempt status under IRC 501(c)(3). The foundation was originally treated as a publicly supporting organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) during their advance ruling period. The foundation later received another determination letter dated March 12, 20XX after their advance ruling period had ended. In this latest determination letter the service made the determination that ORG will be classified as a private foundation under Internal Revenue Code section 509(a).

Agent attempted to set up an appointment to conduct the field audit for the foundation on December 1, 20XX. However it was later determined that the foundation moved their location to Address, City, State. Agent was able to contact RA-1, Representative to follow up on correspondence requested on Information Document Request - 01 (IDR-01). The following was requested on IDR-01 dated December 23, 20XX:

“Please have the following items available for the year ending June 30, 20XX. (Please also provide a copy of each the following documents listed under **item A & D**):

A. In order to ensure that the organizational test is still met, please provide:

1. Original articles of incorporation and all amendments thereafter.
2. The bylaws that was in effect during the year ending June 30, 20XX.
3. The initial exemption letter and all subsequent update, if any.



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4. The initial application for exemption status and the subsequent correspondence related to the application.

B. In order to verify that your activities are exempt activities, please provide:

1. Minutes of board of director's meetings from July 1, 20XX through December 31, 20XX.
2. Copies of newspapers newsletters, brochures, magazines, pamphlets and other literature printed.
3. Any contracts, leases, or agreements to which the organization was a party to in the year under examination.

C. In order to verify the correctness of income, gross receipts, deductions and credits and to reconcile the return to your books, please provide:

1. The audited financial statements for the year ending June 30, 20XX. (Please provide copies)
2. The workpapers that ties the books and records to the Form 990 under examination. (if any)
3. General Ledgers (please provide electronic files if available)
4. Cash disbursement journals (please provide electronic files if available)
5. Bank and investment statements from July 20XX through June 20XX.
6. Cancelled checks for each of the organizations' bank accounts.
7. Invoices and receipts related to cash disbursements made in the year ending June 30, 20XX.

D. In order to verify that you comply with other filing requirements, please provide:

1. Form 990 for the year ending June 30, 20XX (if any).
2. Form 1099s issued in 20XX (if any).
3. Form W-2s issued in 20XX (if any)."

RA-1 responded to Agent in a letter dated March 4, 20XX providing only a copy of the determination letter and a copy of the June 30, 20XX Form 990-PF which was not signed and filed by the foundation from IDR-01. RA-1 stated in the cover letter that "the non profit does not have a bank account through out the audit period. There are no bank statements, no cancelled checks, no invoices, no receipts and disbursements." Review of Form 990-PF filed by the foundation found that the only item listed on the return was that of Investments – Land, Buildings, and equipment basis in the amount of \$. There were no activities conducted by the foundation for the year ending June 30, 20XX as there were no income or expense items that were reported. Review or prior year Form 990s/990-PFs to inception show the following:

Assets -



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<u>Year ending:</u>	<u>Income - Contributions:</u>	<u>Expense:</u>	<u>Investments - Land, Bldgs, etc.:</u>	<u>Net Assets or Fund Balances:</u>
June 30, 20XX	\$\$	\$ 0	\$\$	\$\$
June 30, 20XX	0	0	\$	\$
June 30, 20XX	0	0	\$	\$
June 30, 20XX	0	0	\$	\$
June 30, 20XX	0	0	\$	\$
June 30, 20XX	0	0	\$	\$

With the exception of the contribution received in the year ending June 30, 20XX, it is clear that the foundation has been inactive. The foundation did not participate in activities to further its exempt purpose nor did it make any contributions to other IRC 501(c)(3) organizations. In a letter dated April 28, 20XX from RA-1, he stated that the foundation was going to discontinue their operations after they sell their only asset of \$\$\$. The foundation's only asset was that of a piece of art (ART) that was assembled in City as described by RA-1 that was donated in the year ending June 30, 20XX by RA-2 & RA-3. The asset was labeled as "The ART". Per RA-1, the ART was not rented out nor was there rental income generated by this asset. There were no loans or mortgages for this property. Literature provided by RA-1 describes "The ART is prefabricated, therefore it can be taken apart and moved in pieces. It then can be re-assembled onto the customer's site. The ART can be made larger or smaller but it is presently designed to function as a shelter such as a guest house, studio, office, etc. The structure is presently 65 feet long, 35 feet wide, and 23 feet tall, with about 1,000 square feet of interior and exterior living space. At this point the ART is not finished on the interior. This would have to be done after the structures final function is determined, and moved to the customer's site."

The foundation has sold the ART on June 23, 20XX. RA-1 was unable to provide detail of who bought this asset. RA-1 provided a contract made by Director to hire CO-5 to sell this asset in the amount of \$. RA-1 states that this sale was made below the FMV of the asset due to economic downturns. Sale was done through a public auction with an anonymous buyer. The proceeds were then distributed to vendors that were owed money in addition to the executive director. The foundation's intention is to discontinue operations after this transaction is made. In the Initial Interview conducted with RA-1 and Director, the organization's plan is to dissolve as it has ceased operations since being switched to a private foundation and the fact that the foundation has been inactive since inception.

### LAW:

Internal Revenue Code Section 501(c)(3) exempts from Federal income tax "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or

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animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), and political campaign on behalf of (or in opposition to) any candidate for public office.”

Regulation section 1.501(c)(3)-1(a)(1), *Organizational and operational tests*, provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Income Tax Regulation 1.501(c)(3)-1(c)(1) states, “Primary Activities. An organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.”

Regulation section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The words “private shareholder or individual” refer to persons having a personal and private interest in the activities of the organization. The term “private shareholder or individual” is defined in regulation section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that to meet the operational test, an organization must be engaged in activities furthering “public” purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who created it.

In Better Business Bureau v. United States, 326 U.S. 279 (1945) the court held that regardless of the number of truly exempt purposes, the presence of a single substantial non exempt purpose will preclude exemption under section 501(c)(3) of the Code.

### **TAXPAYER’S POSITION:**

Signed Form 6018 has been received from the foundation agreeing to the revocation of ORG’s exempt status under Internal Revenue Code 501(c)(3) as of July 1, 20XX.

### **GOVERNMENT’S POSITION:**

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The foundation has been inactive since their inception in 20XX. The foundation has not conducted any exempt activities under Internal Revenue Code 501(c)(3) and has no plans in the future to conduct any exempt activities. It is clear from the review of the organization's Forms 990 and 990-PF that the organization's sole asset is a model shelter home and has not conducted any activities since they were formed. The foundation has failed the operational test required for an organization under Internal Revenue Code 501(c)(3). As a result the foundation's exempt status under Internal Revenue Code 501(c)(3) should be revoked as of July 1, 20XX.